

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

MARIA ORTIZ BAZAN; MARISELA
HERNANDEZ; BERNABE COTES
REYES; MARTINA ANASTASIO
HERNANDEZ; ASUNCION REYES
PEREZ; LEONARDO SILVA CHAVEZ;
RUFINO RENDON; JUAN TORIBO
LOPEZ,

Civ. No. 6:19-cv-01823-AA

Plaintiffs,

OPINION & ORDER

v.

COLEMAN INDUSTRIES, INC.;
COLEMAN AGRICULTURE, INC.;
WAFLA,

Defendants.

AIKEN, District Judge.

This case comes before the Court on Defendants' Unopposed Motion to Dismiss Claims Brought by Bernabe Cotes Reyes Pursuant to Federal Rule of Civil Procedure 25. ECF No. 93.

This case involves a group of agricultural workers bringing claims under the Migrant and Seasonal Agricultural Worker Protection Act, as well as under other state and federal statutes. During the pendency of this case, Plaintiff Bernabe Cotes Reyes passed away. Defendants filed a Notice of Suggestion of Death under Federal Rule of Civil Procedure 25(a)(1). ECF No. 88. Rule 25(a)(1) provides:

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Fed. R. Civ. P. 25(a)(1).

To start the 90-day period running under the Rule, a party must be both formally suggest the death of the party on the record, and it must serve the parties and deceased party's successor with the suggestion of death. *Barlow v. Ground*, 39 F.3d 231, 233 (9th Cir. 1994).

In this case, Defendants filed the Notice of Suggestion of Death on July 14, 2022. ECF No. 88. The Notice was served on all parties of record and was served to the deceased Plaintiff's last known address. Neither Defendants' counsel, nor Plaintiffs' counsel have been able to identify or locate any representative or successor, such as a spouse, for Plaintiff Reyes. Bernaske Decl. ¶¶ 2-3. ECF No. 94. In cases where the successors of the decedent are not clearly ascertainable, "courts have refused to require that the moving party identify the representative of the deceased party where the moving party is not counsel for the deceased," and the 90-day time period begins with the filing of the Suggestion of Death. *George v. United States*, 208 F.R.D. 29, 32 (D. Conn. 2001). Plaintiff Reyes' prior counsel does not intend to file a motion for substitution and does not oppose Defendants' motion to dismiss Plaintiff Reyes' claims. The parties have reached a tentative settlement of the case pending resolution of this motion. Bernaske Decl. ¶ 4.

Upon review of the record, the Court concludes that the requirements for dismissal under Rule 25 have been satisfied and Defendants' unopposed motion is GRANTED. All claims brought by Plaintiff Bernabe Cotes Reyes are DISMISSED with prejudice.

It is so ORDERED and DATED this 12th day of December 2022.

/s/Ann Aiken

ANN AIKEN

United States District Judge